

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

HENRY KRUCKENBERG,  
Administrator of the Estate of KAYANN  
KRUCKENBERG, Deceased,

Plaintiff,

vs.

UNITED RENTALS, INC., a  
Corporation, THE INFLATABLE  
STORE, INC., a Florida Corporation  
a/k/a HEC PLASTIC  
MANUFACTURING, INC., a Foreign  
Corporation,

Defendants,

and

UNITED RENTALS, INC.,

Third-Party Plaintiff,

vs.

MARIA BOWEN,

Third-Party Defendant.

and

MARIA BOWEN,

Third-Party Plaintiff,

vs.

AURELIA COMMUNITY SCHOOL  
DISTRICT and TIMOTHY FORDYCE,

Third-Party Defendant.

No. C 06-4052-MWB

**ORDER FOR DISMISSAL  
WITHOUT PREJUDICE**

This matter comes before the court pursuant to the plaintiff's September 19, 2007, Motion To Dismiss Without Prejudice (FRCP 41.1) Or, In The Alternative, Motion For Joinder And Motion For Remand (docket no. 31). In his motion, the plaintiff asserts that this action was originally filed in Iowa District Court, but was removed to this federal court by one of the original defendants, United Rentals, on the basis of diversity jurisdiction. Since that time, however, the plaintiff asserts that one or more of the original defendants have filed third-party actions against other individuals. The plaintiff believes that those third-party defendants should be primary defendants in this action and, to that end, filed an action on April 24, 2007, in Iowa District Court naming all of the third-party defendants as well as the original defendants as primary defendants. In light of the pending action now in Iowa District Court, the plaintiff seeks dismissal of this action without prejudice. The plaintiff states that he does not believe that the defendants and third-party defendants will oppose such dismissal. In the alternative, the plaintiff seeks leave to file an amended complaint in this action naming the third-party defendants as primary defendants, which will destroy diversity and require remand to Iowa District Court.

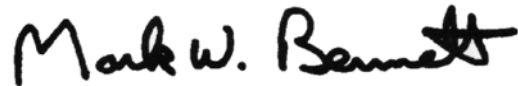
Defendant Inflatable Store, Inc., filed a response to the plaintiff's motion on September 20, 2007, *see* docket no. 32, stating that it has no resistance to dismissal of this action without prejudice. Third-party defendant Timothy Fordyce, defendant United Rentals, and third-party defendant Aurelia Community School District followed suit on September 21, 2007. *See* docket nos. 33-35. Thus, only third-party defendant (and third-party plaintiff) Maria Bowen has failed to file a timely response to the plaintiff's motion.

Under the circumstances, the court finds that dismissal of this action without prejudice is appropriate.

THEREFORE, the plaintiff's September 19, 2007, Motion To Dismiss Without Prejudice (FRCP 41.1) Or, In The Alternative, Motion For Joinder And Motion For Remand (docket no. 31) is **granted** to the extent that this matter, in its entirety, is **dismissed without prejudice**.

**IT IS SO ORDERED.**

**DATED** this 11th day of October, 2007.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive, flowing style with a horizontal line extending from the end of the name.

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MARK W. BENNETT  
U. S. DISTRICT COURT JUDGE  
NORTHERN DISTRICT OF IOWA